

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Wal-Mart Stores, Inc.

Petitioners-Appellants,

v.

City of Ames Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-100-0773
Parcel No. 09-11-251-300**

On December 17, 2009, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Wal-Mart Stores, Inc., was represented by Property Tax Manager David Hebert. The City of Ames Board of Review designated City Attorney Doug Marek as its legal representative. Both parties submitted evidence and testimony in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Wal-Mart Stores, Inc., (Wal-Mart) protested to the City of Ames Board of Review regarding the assessment of the Wal-Mart Super Center #4256 located at 534 South Duff Avenue, Ames, Iowa. The 2009 commercial assessment was \$22,468,000, representing \$7,963,500 in land value and \$14,504,500 in improvement value.

Wal-Mart's claim was based on two grounds: 1) that the assessment is not equitable under Iowa Code section 441.37(1)(a); and 2) that the property is assessed for more than the value authorized by law under section 441.37(1)(b). The Board of Review left the 2009 value unchanged.

We note that during the Board of Review protest process the record shows on May 26, 2009, the Assessor for the City of Ames, Greg Lynch, provided the Board of Review with a written summary regarding the subject property. This document outlines an argument to deny a change in the assessment. However, David Hebert, Wal-Mart's representative, did not appear before the Board of Review until May 27, 2009 in the afternoon session. It is unknown if Mr. Hebert was given the written arguments presented by the assessor prior to or at any time during his hearing. It would seem prudent that arguments made by any party, on the same parcel, be made to the Board of Review in tandem. This allows for the Board to hear both sides without any predisposition and ask questions pertaining to the arguments presented as necessary. This also allows the opportunity for both the assessor's office and protester to engage in constructive dialogue with an effort to reach agreement. Additionally, it permits the parties to fully understand any opposing arguments. Hearing only one side of the testimony prior to the protest hearing could unfairly influence the Board of Review's decision and does not provide transparency in the process.

Wal-Mart then appealed to this Board, asserting the same grounds of inequity and over-assessment. Wal-Mart seeks relief of \$6,140,105 and a total assessed value of \$16,327,895.¹ It asserts the greatest issue is inequity.

The subject site was assembled from the purchase of five smaller sites and platted into a single parcel in 2006. The subject site is an irregular shaped lot containing 982,659 square feet (22.56 acres); and has frontage access on South Duff Avenue to the west, as well as S.E. 5th Street to the north. Improvements include a 215,744 square-foot building and 593,300 square feet of paving. Construction on the improvements began in 2007 and completed in 2008. The store opened for business in the spring of 2008.

¹ This number was later amended by Wal-Mart based upon the sales ratio study.

Hebert contends that Wal-Mart is not equitably assessed when compared to other “big box” stores in the same taxing jurisdiction. In an effort to prove this claim, Hebert provided independent appraisals of the subject property, as well as big box stores K-Mart and Target in Ames. He used the values determined by these appraisals to compare the market value to assessed value ratios.

Real estate appraiser Patrick J. Schulte, of Commercial Appraisers of Iowa, Inc., along with significant professional assistance from Levi Freedman, provided appraisals for Wal-Mart, K-Mart, and Target. Mr. Schulte also testified regarding the appraisals. All three appraisals have an effective date of January 1, 2009, and opine the market value of each property. All three approaches to value (sales, cost, and income) were completed in each assignment prepared by Schulte. Schulte physically inspected all three properties; however, K-Mart and Target included partial inspections of only the public areas. We find all three appraisals to be credible.

Wal-Mart provided the following information to demonstrate its equity claim.

	Assessed Value	Market Value	Ratio of Assessed/Market Value
Wal-Mart	\$22,468,000	\$20,300,000	111%
Target	\$ 8,123,000	\$10,400,000	78%
K-Mart	\$ 7,939,000	\$ 9,400,000	84%

$$\text{Assessed Value} / \text{Market Value} = \text{Ratio}$$

The ratio represents the relationship of the assessment compared to the market value of the property.

The subject property has over 210,000 square feet of gross building area (GBA) making it amongst the largest big box stores in the state of Iowa. K-Mart and Target have roughly 120,000 and 122,000 square feet of GBA, respectfully. Although these two properties, selected by Wal-Mart as

comparable and presented for the equity claim are significantly smaller, their market value would be reflective of this difference and the ratio of assessed value to market value would be a consistent measurement of equity.

Additionally, Wal-Mart was built in 2008; whereas K-Mart and Target were built in 1993 and 1999, respectively. Because it is not common for such facilities to be built for speculation purposes, there are no sales of “new” properties. It is this Board’s opinion that if all of these properties were for sale at the same time, they would directly compete for buyers with considerations for age and size. Schulte considered physical depreciation within his analysis, and again despite the age differences between the subject and the properties supplied by Wal-Mart as comparables, the ratio analysis is considered to be a consistent measurement of equity.

Wal-Mart also provided this Board with a summary of the assessed values of all Iowa Wal-Marts and a graph of those values; demonstrating that the subject Wal-Mart is assessed the highest in the State. This evidence however, does not aid in the equity claim, as the comparables must come from the subject’s taxing jurisdiction. *Maytag Co. v. Partridge*, 210 N.W.2d 584, 594-95 (Iowa 1973).

While it appears Wal-Mart’s focus on appeal is inequity, it also contends the subject property is assessed for more than authorized by law. To demonstrate the market value of the subject property, Wal-Mart submitted Schulte’s appraisal which concludes a market value opinion, as of January 1, 2009, of \$20,300,000. This opinion considered all three approaches to value with the greatest consideration given to the cost approach due to the age of the building and minimal depreciation considered.

Despite providing an appraisal opining a market value of \$20,300,000, Wal-Mart believes this Board should set the assessed value of the subject property using an equity ratio. It contends that an equitable assessment would be 81% of the market value or \$16,443,000. Its reason for this is because

81% is the average, or median, of the assessed value to market value ratio of Target and K-Mart's assessments to market value.

Greg Lynch, City of Ames Assessor, testified on behalf of the Board of Review. The Board of Review supplied a summary appraisal report prepared by Mr. Lynch. This appraisal indicates a value opinion of \$21,804,500 based solely upon the cost approach. The effective date of value is January 1, 2009; the report date is December 3, 2009. The value opinion presented in the appraisal is slightly lower than the 2009 assessment of \$22,468,000. Lynch testified that this lower value opinion takes into consideration depreciation, which wasn't originally applied in the 2009 assessment.

Lynch does not believe that the sales comparison approach to value is applicable due to a lack of sales of "Super Center" retail facilities. Further, it is Lynch's opinion that the use of older retail sales weakens the reliability of this approach to value. Lynch did not develop the income approach to value for similar reasons.

Lynch testified that he used only actual costs in developing his value opinion. He did not verify these costs with any other cost manual to ensure that they were truly reflective of market value. Nor did he develop any other approach to value to cross-check the cost approach. Iowa Code 441.21(2) states that "the actual value shall not be determined by the use of only one such factor." While actual costs may be a good indicator of market value, as a single source it cannot be reasonably determined that actual cost definitively equals market value. While Lynch's testimony appeared sincere, the methods he professed using contradict Iowa law.

The Board of Review also provided two appraisals as evidence of the market value of K-Mart, one of the properties supplied as an equity comparable by Wal-Mart. The appraisals submitted by the Board of Review indicate market values for K-Mart as of January 1, 2009, ranging from \$5,500,000 to \$7,600,000. Wal-Mart's appraisal on K-Mart indicated a market value of \$9,400,000. The Board of

Review did not provide any testimony regarding the appraisals; and we therefore give little weight to them as compared to Schulte's appraisal.

Given Lynch's and Schulte's opinions of market value, we consider Schulte's opinion is the best evidence because it considered three approaches to value and reconciled multiple cost sources. By developing all three approaches and weighing the outcomes into a single reconciliation, Schulte's appraisal most accurately reflects all aspects of market actions and considers any potential obsolescence in the market place for being an over-improvement or limited-use structure.

Considering the evidence, it is this Board's opinion that Wal-Mart has provided sufficient evidence demonstrating the market value of the subject property is \$20,300,000.

In regards to the claim of equity, the Board of Review did not provide any rebuttal of the properties presented by Wal-Mart as equity comparables. Nor did the Board of Review provide any properties as equity comparables to demonstrate the subject is equitably assessed. Although the burden did not shift to the Board of Review, the evidence suggests the property is not only over-assessed but also inequitably assessed.

In Lynch's opinion, the two properties submitted by Wal-Mart as equity comparables (Target and K-Mart) were too dissimilar in age and GBA to be comparable. While it would be desirable to have newer and more similar sized buildings, it is recognized that this is not always possible, specifically with custom improvements such as the super retail store. Additionally, the argument of dissimilar age and GBA is stronger in the consideration of a market value versus equity claim.

A taxpayer may show inequity by two methods. An older way that may now be less applicable given law change, is to show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965).

Alternatively, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993).

In this case, Wal-Mart provided two properties that it considered as equity comparables; and appeared to meet all of the criteria set forth in *Maxwell v. Shriver*, demonstrating that the subject has a higher assessed value to market value ratio than other like properties. The subject property is assessed at 111% of its market value, whereas the two properties presented indicate a ratio range of 78% to 84% with an average of 81%. While the Board of Review contends two properties is not enough to show inequity, we need not reach this issue.

When questioned, Lynch testified that he used different methods to assess similarly situated big box stores. In his valuation of Wal-Mart, Lynch testified that he relied solely on the actual costs and did not use any cost manuals to arrive at his assessment. Conversely, when assessing Target and K-Mart, both similarly situated and like-style properties, Lynch developed both the income and cost approaches. Additionally, he used cost manuals for these properties, versus considering actual costs as with the Wal-Mart property. While Lynch is honest and forthright in his testimony, his testimony clearly shows the subject property was assessed using different methods in comparison to other like properties. This demonstrates inequity in the assessment under *Eagle Foods*.

We find that evidence submitted by Wal-Mart is the most credible and conforming to Iowa law. It demonstrates the subject is inequitably assessed both in terms of proportionality and methods considered. Hebert asserts that the equitable assessment of the subject property is 81% of its market value, \$20,300,000; or \$16,443,000. Further, Schulte's appraisal of Wal-Mart demonstrates it is also over-assessed.

Based upon the foregoing, the Appeal Board finds that Wal-Mart has provided sufficient evidence supporting its claims. While Wal-Mart encourages us to use a ratio to determine its correct

assessment, we find the best evidence in the record is the appraisal completed by Mr. Schulte supporting a value of \$20,300,000.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 579-580. The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1).

Wal-Mart provides sufficient evidence demonstrating the ratio test and clearly identifies a difference between assessment and market value of other like properties. While there is a question as to whether two comparables is sufficient in proving inequity based upon the ratio test, testimony from the Board of Review plainly confirmed that the assessor did not apply assessing methods uniformly. Therefore, we find Wal-Mart clearly demonstrated it was inequitably assessed under *Eagle Foods*, and do not reach the issue of whether two comparables is sufficient under *Maxwell*.


Moreover, we find that not only did Wal-Mart show inequity, it also showed it was over-assessed. In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive, as well as, the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Wal-Mart presented sufficient evidence demonstrating that the assessment is excessive and that the correct market value of the subject property is \$20,300,000.

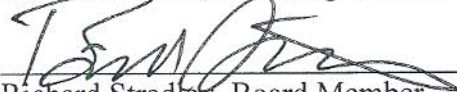
Because we find this property is inequitably assessed and over-assessed, we must set a new value. Although Wal-Mart encourages us to use a ratio to determine its correct assessment, we find the best evidence in the record is the market value appraisal completed by Mr. Schulte.

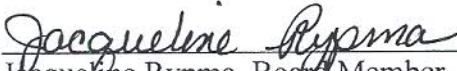
THE APPEAL BOARD ORDERS the assessment of the Wal-Mart Super Center #4256 located at 534 South Duff Avenue, Ames, Iowa, be modified to a total value of \$20,300,000, representing \$6,880,000 in land value and \$13,420,000 in improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Story County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 19 day of JANUARY, 2010


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

Wal-Mart Stores, Inc.
c/o Dave Hebert, CMI
Property Tax Manager
Wal-Mart Stores, Inc. Property Tax Department
PO Box 8050/MS0555
Bentonville, AR 72712-8050
APPELLANTS

Douglas Marek
Ames City Attorney
515 Clark Avenue
PO Box 811
Ames, Iowa 50010
ATTORNEY FOR APPELLEE

Mary Mosiman
900 6th Street
Nevada, IA 50201
STORY COUNTY AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-19</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	